THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No. 25494 of 2006

Date 22-12-2006

Between:

Everest English Medium High School,
Rep., by its Correspondent,
Munganuruvari Street, Nellore.

..... PETITIONER

AND

The Employees Provident Fund Organisation,
Rep., by its Chief Provident Fund Commissioner,
New Delhi and another.

.....RESPONDENTS

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION No. 25494 of 2006

O R D E R :

The petitioner is a school claims to have been established in the year 1995. It is pleaded that the petitioner had never employed teaching and non-teaching staff put together exceeding 20 in number. Thus, it is contended that the petitioner-school does not come under the purview of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the Act'). While so, the auction notice dated 25-08-2006 was published in a local daily proposing to auction the land, building and machinery of the petitioner-school as is where is basis. The said auction notice was issued by the second respondent-Assistant Provident Fund Commissioner under the provisions of the Act alleging that the petitioner is a defaulting establishment and therefore, the movable and immovable properties specified thereunder were attached and the same would be sold on 08-09-2006 and
11-09-2006 at 10.00 A.M. However, since no bidder has come forward, the auction proposed under the said notice did not take place. Subsequently, the respondents have issued a warrant of arrest dated 11-09-2006 in the name of the correspondent-secretary of the petitioner-school. It was alleged in the said warrant that as per recovery certificate No.23/2004, dated 05-04-2004, a sum of Rs.12,88,689/- is to be recovered from the petitioner-school under the provisions of the Act and since the said

amount has not been paid, the correspondent and Secretary of the petitioner-school is liable to be arrested. Pursuant thereto, the correspondent was arrested and detained in sub jail, Nellore till 13-09-2006. Subsequently, he was released on payment of about Rs.20,00,000/- towards purported dues. That apart, the respondents had also obtained two post-dated cheques from the secretary and correspondent of the petitioner-school by coercion. The said post-dated cheques were dated
20-12-2006 and 25-12-2006 for Rs.12,00,000/- each from the account being maintained in the State Bank of India, Nellore Town Branch. Thereafter, the second respondent issued further proceedings dated 12-09-2006 purportedly under Section 7C of the Act assessing that a sum of Rs.42,328/- is payable towards the escaped amount for the period from 6/95 to 4/02 and 5/02 to 10/06. Aggrieved by the said action of the respondents, this writ petition is filed seeking a declaration that the action of the respondents in determining the liability of the petitioner-school under the provisions of the Act is arbitrary and illegal and consequently direct the respondents to refund the amounts collected on
12-09-2006.

On behalf of the respondents, the Assistant Provident Fund Commissioner filed a counter affidavit stating that all the educational institutions were brought under the purview of the Act through notification dated 19-02-1982 issued under Section 1(3) (b) of the Act. Pursuant thereto, the petitioner itself furnished the coverage particulars mentioning that it employed 20 persons as on 08-07-1993. Basing on the said particulars, the petitioner-school was issued coverage intimation dated 18-10-1993 allotting Code No.AP/25107 and the same was acknowledged by the petitioner on

05-11-1993. Thereafter, an enquiry under Section 7A of the Act was initiated to assess the dues. Though summons dated 04-11-1994 were served on the petitioner, he failed to attend the enquiry and consequently an *ex parte* assessment was made for Rs.32,780/- for the period from 8/93 to 5/95 vide proceedings dated 11-10-1995. The said order was served on the petitioner on 30-10-1995. Subsequently, for the period from 6/95 to 4/2002 a sum of Rs.12,88,689/- was assessed by order dated 11-03-2004. In spite of service of summons, the petitioner failed to attend the said enquiry and after granting several adjournments, ultimately an *ex parte* assessment was made for the said period.

Similarly, in the enquiry conducted under Section 7A of the Act for the period from 5/02 to 5/06, the petitioner failed to appear in spite of service of summons dated 13-08-2004. A further notice dated 02-01-2006 was returned with postal endorsement 'refused'. Thus, an *ex parte* assessment was made on 07-07-2006 determining that a sum of Rs.8,44,495/- is payable.

That apart, an enquiry under Section 7C of the Act was also initiated to assess the dues of escaped amounts and the same was assessed at Rs.42,328/- by order dated 12-09-2006 and further interest and damages payable under Section 7Q and 14B of the Act were also levied vide proceedings dated 12-09-2006 which was quantified at Rs.7,90,851/- and Rs.13,15,888/- respectively.

Thus, it is contended that the respondents following due process of law had rightly determined the amounts payable by the petitioner under the provisions of the Act and since the petitioner committed default in payment of the same, the warrant of arrest was issued. Subsequently, the correspondent of the petitioner-school was released on deposit of Rs.20,00,000/- through demand

drafts and another Rs.20,00,000/- through post-dated cheques. Still there is a balance of Rs.3,15,131/- and therefore, the petitioner is not entitled to any refund as claimed by it.

An affidavit in reply has been filed by the petitioner disputing the version of the respondents and reiterating that the petitioner was not aware of any assessments said to have been made under Section 7A of the Act. It was also stated that there was no notice at any point of time to the petitioner with regard to the enquiry said to have been conducted under Section 7A of the Act.

I have heard the learned counsel for both the parties and perused the material on record.

The learned counsel for the petitioner contended that though in the counter affidavit the respondents have made an attempt to show that more than Rs.40,00,000/- is due from the petitioner-school, the fact that in the warrant of arrest dated 11-09-2006, Rs.12,00,000/- was shown as due itself shows that the alleged assessment was not bonafide and only an after thought to defeat the rights of the petitioner.

Having regard to the rival claims made by the parties and on perusal of the original record placed before this Court, it is clear that assessments under Section 7A of the Act have been made from time to time against the petitioner-school starting from the year 1993, whereas the respondent claimed that the petitioner-school was allotted Code Number and the provisions of the Act were made applicable only on the basis of the particulars furnished by the petitioner and the coverage intimation dated 18-10-1993 was served on the petitioner apart from the summons in the enquiries taken up from time to time under Section 7A of the Act as well as the orders of assessment, the petitioner contends that no such notices or orders were however served on it and that it

was not aware of any of the said proceedings. It is also vehemently contended that the provisions of the Act cannot be extended to the petitioner-school since the petitioner has never engaged persons exceeding 20 at any point of time from the inception.

The above issues being a pure disputed questions of fact can neither be enquired into nor decided by this Court in exercise of jurisdiction under Article 226 of the Constitution of India. It is to be noted that under Section 7 I of the Act, an efficacious alternative remedy of appeal is available against the orders passed either under Section & 7E or 7C and 14 of the Act. It is open to both the parties to produce the supporting material to substantiate the respective claims of the parties before the appellate forum, in which event, on appreciation of the same, the validity of the findings recorded by the second respondent can be decided.

However, the fact remains that as on today, three assessments were made under Section 7A of the Act against the petitioner for three different periods and more than Rs.40,00,000/- is payable by the petitioner. Though the petitioner disputes the said assessments for the purpose of the present writ petition, the same cannot be accepted in view of the record placed before this Court by the learned counsel for the respondents. However, it is made clear that this Court shall not be understood to have expressed any opinion since this Court opined that it is a matter for enquiry by the appellate authority.

However, the learned counsel for the petitioner pointed out that as on today, the appellate forum is not functioning for want of quorum.

Be that as it may, since it is not in dispute that the petitioner

has paid a sum of Rs.20,00,000/- by way of demand drafts, I deem it appropriate to dispose of the writ petition granting liberty to the petitioner to prefer appeals against the impugned assessments made by the second respondent. If such appeals are made within four weeks from today, the same shall be entertained and appropriate orders be passed in accordance with law. Since a sum of Rs.20,00,000/- being half of the liability of the petitioner was already satisfied, it would be appropriate to await the decision of the appellate forum and till such time, it is necessary in the interest of justice to restrain the respondents from recovering the balance of the alleged arrears.

Accordingly, the writ petition is disposed of with a direction to the respondents to return the post-dated cheques obtained from the petitioner forthwith. No costs.

_____

(G. ROHINI, J)

Dated 22-12-2006
KLP